IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3438 OF 2018

The New India Assurance Company Limited. … Petitioner.
V/s.
The Insurance Ombudsman Mumbai & Goa and others. … Respondents.

Ms.Rajalakshmy Mohandas for the petitioner.
Ms.Nandini Singh Modi with Ms.Aayushi Jain i/b. MZD Legal Consultancy for respondent No.2.

CORAM : A.S.OKA AND M.S.SANKLECHA, JJ.

DATE : 13th March 2019

P.C.:

Heard the learned counsel appearing for the petitioner. The challenge in this petition under Article 226 of the Constitution of India is to an award made by the Insurance Ombudsman. The Insurance Ombudsman has been appointed under the provisions of the Insurance Ombudsman Rules, 2017 (for short "the said Rules of 2017"). The said Rules of 2017 have been framed in exercise of powers conferred by section 24 of the Insurance Regulatory and Development Authority Act, 1999.

2. A brief reference to the facts of the case will be necessary. The second respondent is the complainant before the Ombudsman. He was admitted to Breach Candy Hospital in Mumbai from 24th October

2016 to 1st November 2016 for the treatment of severe aortic regurgitation with dilatation of ascending aorta and underwent aortic valve replacement surgery. Initially, the second respondent was admitted in Bhatia Hospital with various complaints where investigation was undertaken. After consulting several doctors, the second respondent was advised to go for aorta as well as valve replacement. After enquiry with number of hospitals, the second respondent made his choice and decided to undergo procedure under Dr.Bhattacharya who was attached to the Breach Candy Hospital (for short "the said Hospital"). After undergoing the surgical procedure, a claim was lodged by the second respondent under Individual Mediclaim Policy and Top Up Policy issued by the petitioner company. The claim was settled by the petitioner. While settling the claim, the petitioner deducted a substantial amount from the surgeon's and anaesthetist's fees. That is the reason why a complaint was filed by the second respondent by invoking Rule 14 of the said Rules of 2017 before the Ombudsman. The case of the second respondent was that the petitioner was advised to undergo a major surgery involving high operative risk due to low pumping of lungs which required him to go to the best available surgeon.

3. Only after making enquiry with various reputed hospitals, the exercise of choice of a particular hospital and a particular surgeon was made by the second respondent. The complaint was for settlement of balance claim of fees payable to the surgeon and anaesthetist. The Ombudsman in the impugned award held that the second respondent insurer has opted for highest possible insurance cover from the petitioner

company. It was observed that though the charges paid to the surgeon may appear to be on the higher side, the second respondent was helpless and had to pay. He held that the second respondent had paid the charges to the said Hospital. After observing that there is no specific capping under the policy and, therefore, there is no basis for deduction, that a direction was issued by the Ombudsman to pay the balance amount of fees of Rs.14,58,000/- to the second respondent in full and final settlement of his claim.

4. The first submission of the learned counsel appearing for the petitioner is based on clause 2.31 incorporated in the Top-Up mediclaim policy of insurance. Her submission is that an enquiry was made in other hospitals in the geographical area about the fees payable in similar cases to surgeon and anaesthetist and, only after comparing the fees payable, that a lesser amount was settled by the petitioner. Her submission is that standard charges are paid. Her second contention is based on clause 4.3.1 of the said policy. Thirdly, it is submitted that the petitioner company is not liable to pay exorbitant amount by way of fees. She submitted that clause 2.31 is incorporated in the light of Regulation 37 of the IRDAI (Health Insurance) Regulations, 2016 (for short “the said Regulations”) . She invited our attention to Regulation 25 of the said Regulations. She submitted that the claim of the second respondent for hospitalization in Bhatia Hospital and Breach Candy Hospital has been settled which exceeded the limit under the basic policy and, therefore, the balance claim was considered under the Top Up policy by partially disallowing the surgeon's and anaesthetist's fees. Her submission is that

the insurance company has acted within four corners of the terms and conditions of the policy. She invited our attention to the award dated 21st December 2018 made by the Ombudsman in a similar case wherein diagonally opposite view is taken in similar facts of the case. She submitted that a table of admissible fees is annexed to the copy of the said award dated 21st December 2018. Her submission is that the impugned order is perverse and needs interference at the hands of this Court.

5. Before we deal with the submissions, we may note here that a preliminary objection was raised by the learned counsel appearing for the second respondent that writ petition at the instance of the petitioner is not maintainable as the award is binding on the petitioner in view of sub-rule (8) of Rule 17 of the said Rules of 2017.

6. We have carefully considered the submissions. We have perused the said Rules of 2017. It is not the contention of the petitioner that Ombudsman had no jurisdiction to entertain the complaint. The challenge is on merits. It is true that under sub-rule (8) of Rule 17, the award of the Ombudsman is binding on the petitioner. However, that does not take away the jurisdiction of the Writ Court under Article 226 of the Constitution of India.

7. Considering the scope of powers of the Ombudsman and duties and functions assigned to the Ombudsman under Rule 13 of the said Rules of 2017, it is obvious that unless there is a perversity shown in the award made by the Ombudsman or there is a gross illegality or arbitrariness, interference cannot be made in writ jurisdiction.

8. Firstly, we must note here that it is not the case made out by the petitioner before the Ombudsman that the claim made by the second respondent exceeded the cap or the insurance cover. Reliance was placed on clause No.2.31 which reads thus:

> **"2.31 REASONABLE AND CUSTOMARY EXPENSES** means the charges for services or supplies, which are the standard charges for the specific provider and consistent with the prevailing charges in the geographical area for identical or similar services, taking into account the nature of the illness/injury involved."

It is also necessary to note clause No.3.1 which reads thus:

> "3.1 Our liability for all claims admitted during the Period of Insurance in respect of all Insured Persons, including all payment related to clause 3.1(e) and 3.6, will be only up to Sum Insured as mentioned in the Schedule. Subject to this, We will reimburse the following Reasonable and Customary and Medically Necessary Expenses admissible as per the terms and conditions of the Policy:

3.1 (a)	Room Rent, boarding and nursing expenses actually incurred subject to a cap of Rs.5000 per day for Rs.5,00,000 Threshold and Rs.8000 per day for Rs.8,00,000 Threshold
3.1 (b)	Intensive Care Unit (ICU) / Intensive Cardiac Care Unit (ICCU) expenses actually incurred subject to a cap of Rs.10000 per day for Rs.5,00,000 Threshold and Rs.16000 per day for Rs.8,00,000 Threshold.

3.1 (c)	Surgeon, Anaesthetist, Medical Practitioner, Consultants, Specialist fees.
3.1 (d)	Anaesthesia, Blood, Oxygen, Operation Theatre Charges, Surgical Appliances, Medicines & Drugs, Dialysis, Chemotherapy, Radiotherapy, Artificial Limbs, Cost of Prosthetic devices implanted during surgical procedure like pacemaker, Relevant Laboratory/ Diagnostic test, X-Ray and other medical expenses related to the treatment.
	Reimbursement/ payment of Room, boarding and nursing expenses incurred at the Hospital shall not exceed limits as mentioned in 3.1.(a). In case of admission to Intensive Care Unit or Intensive Cardiac Care Unit, reimbursement or payment of such expenses shall not exceed limits as mentioned in 3.1.(b). In case of admission to a Room Rent/ ICU/ ICCU at rates exceeding the aforesaid limits, the reimbursement/ payment of all other expenses incurred at the Hospital, with the exception of cost of medicines and implants, shall be effected in the same proportion as the admissible rate per day bears to the actual rate per day of Room Rent/ICU/ICCU charges.
3.1 (e)	**Get Well Benefit** of Rs.5000 for Rs.5,00,000 Threshold and Rs.8000 for Rs.8,00,000 Threshold, will be paid for Any One illness. This benefit will be payable only for the first four admissible claims under the Policy. This benefit will reduce the Sum Insured.

Perusal of clause No.3.1 shows that sub-clauses (a) and (b) of the said clause impose a ceiling or cap on the amount of reimbursement. Sub-clause (c) of clause 3.1 covers the fees of surgeon, anaesthetist, medical practitioner, consultants specialist. There is no cap imposed on fees of such professionals. Reliance was also placed on clause 4.3.1. which excludes certain illnesses from the scope of the policy. The illness of the

second respondent is admittedly not excluded by clause 4.3.1. Clause 2.31 provides that reasonable charges will be the standard charges consistent with prevailing charges in the geographical area for identical or similar services. There is no definition of geographical area in the policy. Moreover, the concept of standard charges is not defined. The petitioner cannot choose arbitrary geographical area. Moreover, the minimum charges prevailing in a particular area cannot be equated with the standard charges. Advisedly, clause 2.31 does not provide that minimum charges in the geographical area will be taken as reasonable charges. The emphasis is on the standard charges. The case of the second respondent is that considering the risk involved in the surgery due to his medical condition, after making an enquiry with various reputed hospitals and after noticing that the charges of some of the hospitals were on higher side, a choice of the said Hospital was made. It is not the case of the petitioner that the bills submitted by the second respondent of the surgeon and anaesthetist were not genuine or the same were inflated or that the second respondent/ insured had not paid the actual amount mentioned therein. The petitioner has arbitrarily decided what are the standard charges by arbitrarily deciding the geographical area.

9. Perusal of the impugned award would show that the contentions raised by the petitioner have been considered by the Ombudsman. The relevant findings recorded by the Ombudsman read thus:

> "..... **The Forum therefore independently analyzed the case and is of the view that the deduction from professional charges of Surgeons and operation charges on the ground**

> **of "Reasonability" will not sustain as the doctor's fees will depend on the individual skill, time and complications involved in the surgery and the patient has no control over it. The insured has opted for highest possible insurance cover from the Company. Although the surgeon charges appear to be on higher side, insured is helpless and had to pay.** Accordingly he has paid all the charges to the hospital. In view of the same and in the absence of specific capping under he policy, there is no justification for such arbitrary deductions from the professional charges and the same have to be allowed....."
>
> (emphasis supplied)

Thus, the Ombudsman has noted that the ground of reasonability based only on quantum cannot be sustained as the doctor's fees will depend upon his individual skill, time and complications involved in the surgery. He has observed that the patient has no control over it as the patient is helpless.

10. The findings rendered by the Ombudsman are after due consideration of the submissions of the petitioner. By no stretch of imagination, it can be said that the impugned order is perverse. A possible and logical view has been taken by the Ombudsman in the facts of the case.

11. We may note here that it is not even the case of the petitioner that there was any prohibition imposed in the terms and conditions of the policy that the insurer will go to a particular hospital or a particular doctor or that the insurer will go to a particular doctor who will not charge the amount more than a particular amount.

12. Now coming to the other order of the Ombudsman relied upon by the petitioner, we find that the same is completely irrelevant. In writ jurisdiction, our duty is to test legality of the impugned order of the Ombudsman within the parameters of Article 226 of the Constitution of India. Merely because the Ombudsman has taken a view which is allegedly a contrary view, the impugned order cannot become bad or illegal.

13. Reliance was placed on a chart appended to the said order tendered across the bar. Nothing is placed on record to show authenticity of the said chart and there is no condition incorporated in the policy that though there is no cap on the insurance amount or the amount to be reimbursed, the amount mentioned in the chart will be paid. Even going by the said chart, the surgeon's fees payable in Breach Candy Hospital Trust is of Rs.6 lakh which is much higher that the amount settled by the petitioner.

14. We find no reason to interfere with the impugned award of the Ombudsman. Accordingly, the writ petition is rejected.

(M.S.SANKLECHA, J.) (A.S.OKA, J.)